

Tennessee Valley Authority

§ 1304.6

this section, any interested person may become a party of record by following the directions contained in the hearing notice.

(c) Hearings concerning approval of applications are conducted (in accordance with §1304.5) when:

(1) TVA deems a hearing is necessary or appropriate in determining any issue presented by the application;

(2) A hearing is required under any applicable law or regulation;

(3) A hearing is requested by the USACE pursuant to the TVA/Corps joint processing Memorandum of Understanding; or

(4) The TVA Investigator directs that a hearing be held.

(d) Upon completion of the review of the application, including any hearing or hearings, the Vice President shall issue a decision approving or disapproving the application. The basis for the decision shall be set forth in the decision.

(e) Promptly following the issuance of the decision, the Vice President or the Board, as the case may be, shall furnish a written copy thereof to the applicant and to any parties of record. The Vice President's decision shall become final unless an appeal is made pursuant to §1304.6. Any decision by the Board on a matter referred by the Vice President shall be a final decision.

§ 1304.5 Conduct of hearings.

(a) If a hearing is to be held for any of the reasons described in §1304.4(c), TVA shall give notice of the hearing to interested persons. Such notice may be given by publication in the FEDERAL REGISTER, publication in a daily newspaper of general circulation in the area of the proposed structure, personal written notice, posting on TVA's Internet website, or by any other method reasonably calculated to come to the attention of interested persons. The notice shall indicate the place, date, and time of hearing (to the extent feasible), the particular issues to which the hearing will pertain, and the manner of becoming a party of record, and shall provide other pertinent information as appropriate. The applicant shall automatically be a party of record.

(b) Hearings may be conducted by the Vice President and/or such other per-

son or persons as may be designated by the Vice President or the Board for that purpose. Hearings are public and are conducted in an informal manner. Parties of record may be represented by counsel or other persons of their choosing. Technical rules of evidence are not observed although reasonable bounds are maintained as to relevancy, materiality, and competency. Evidence may be presented orally or by written statement and need not be under oath. Cross-examination by parties of witnesses or others providing statements or testifying at a hearing shall not be allowed. After the hearing has been completed, additional evidence will not be received unless it presents new and material matter that in the judgment of the person or persons conducting the hearing could not be presented at the hearing. Where construction of the project also requires the approval of another agency of the Federal Government by or before whom a hearing is to be held, the Vice President may arrange with such agency to hold a joint hearing.

§ 1304.6 Appeals.

(a) Decisions approving or disapproving an application may be appealed as provided in this section. Decisions by the Vice President's designee shall be reviewed by the Vice President; decisions by the Vice President shall be reviewed by the Board.

(b) If a designee of the Vice President disapproves an application or approves it with terms and conditions deemed unacceptable by the applicant, the applicant may, by written request addressed to the Vice President, Resource Stewardship, Tennessee Valley Authority, P.O. Box 1589, 17 Ridgeway Road, Norris, TN 37828-1589, and mailed within thirty (30) days after receipt of the decision, obtain review of the decision by the Vice President. If the Vice President, either initially or as the result of an appeal, disapproves an application or approves it with terms and conditions deemed unacceptable by the applicant, the applicant may, by written request addressed to the Board of Directors, Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, TN 37902, and mailed within thirty (30)

days after receipt of the decision, obtain review of the decision by the Board. In either event, the request must contain a signed representation that a copy of the written request for review was mailed to each party of record at the same time as it was mailed to TVA. A decision by the Vice President is a prerequisite for seeking Board review. There shall be no administrative appeal of a Board decision approving or disapproving an application.

(c) A party of record at a hearing who is aggrieved or adversely affected by any decision approving an application may obtain review by the Board or by the Vice President, as appropriate, of such decision by written request prepared, addressed and mailed as provided in paragraph (b) of this section.

(d) Requests for review by the Vice President shall specify the reasons why it is contended that the determination of the Vice President's designee is in error.

(e) The applicant or other person requesting review and any party of record may submit additional written material in support of their positions to the Vice President within thirty (30) days after receipt by TVA of the request for review. Following receipt of a request for review, the Vice President will conduct such review as he or she deems appropriate. If additional information is required of the applicant or other person requesting the review, the Vice President shall allow for at least thirty (30) days in which to provide the additional information. At the conclusion of the review, the Vice President shall render his or her decision approving or disapproving the application.

(f) Requests for review by the Board shall specify the reasons why it is contended that the Vice President's determination is in error and indicate whether a hearing is requested.

(g) The applicant or other person requesting review and any party of record may submit additional written material in support of their positions to the Board within thirty (30) days after receipt by TVA of the request for review. Following receipt of a request for review, the Board will review the material on which the Vice President's decision was based and any additional information submitted by any party of

record, or a summary thereof, and may conduct or cause to be conducted such investigation of the application as the Board deems necessary or desirable. In the event the Board decides to conduct an investigation, it shall appoint an Investigating Officer. The Investigating Officer may be a TVA employee, including a TVA Resource Stewardship employee, or a person under contract to TVA, and shall not have been directly and substantially involved in the decision being appealed. The Investigating Officer shall be the hearing officer for any hearing held during the appeal process. At the conclusion of his or her investigation, the Investigating Officer shall summarize the results of the investigation in a written report to the Board. The report shall be provided to all parties of record and made part of the public record. Based on the review, investigation, and written submissions provided for in this paragraph, the Board shall render its decision approving or disapproving the application.

(h) A written copy of the decision in any review proceeding under this section, either by the Vice President or by the Board, shall be furnished to the applicant and to all parties of record promptly following determination of the matter.

§ 1304.7 Conditions of approvals.

Approvals of applications shall contain such conditions as are required by law and may contain such other general and special conditions as TVA deems necessary or desirable.

§ 1304.8 Denials.

TVA may, at its sole discretion, deny any application to construct, operate, conduct, or maintain any obstruction, structure, facility, or activity that in TVA's judgment would be contrary to the unified development and regulation of the Tennessee River system, would adversely affect navigation, flood control, public lands or reservations, the environment, or sensitive resources (including, without limitation, federally listed threatened or endangered species, high priority State-listed species, wetlands with high function and value, archaeological or historical sites of national significance, and other sites